

Introduced by Senator Florez

February 22, 2005

An act to amend Section 867 of the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

SB 781, as introduced, Florez. Financial institutions: check holds.

Existing law requires that funds deposited in an account at a depository institution be made available on the 2nd business day after the business day on which the funds are deposited, in the case of a cashier's check, certified check, teller's check, or depository check.

This bill would instead require funds from any check that is deposited in an account at a depository institution to be made available on the same business day on which the funds are deposited.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 867 of the Financial Code is amended to
2 read:
3 867. (a) Funds deposited in an account at a depository
4 institution shall be available on the ~~second~~ same business day
5 ~~after the business day~~ on which those funds are deposited in the
6 case of *any check, including* a cashier's check, certified check,
7 teller's check, or depository check, subject to the following:
8 (1) The check is endorsed only by the person to whom it was
9 issued.
10 (2) The check is deposited in a receiving depository institution
11 that is staffed by individuals employed by that institution.

1 (3) The check is deposited with a special deposit slip that
2 indicates it is a cashier's check, certified check, teller's check, or
3 depository check, as the case may be.

4 (4) The check is deposited into an account in the name of a
5 customer that has maintained any account with the receiving
6 depository institution for a period of 60 days or more.

7 (5) The face amount of the check is for five thousand dollars
8 (\$5,000) or less.

9 In the case of funds deposited on any business day in an
10 account at a depository institution by depository checks, the
11 aggregate amount of which exceeds five thousand dollars
12 (\$5,000), this subdivision shall apply only with respect to the
13 first five thousand dollars (\$5,000) of the aggregate amount.

14 (b) Subdivision (a) does not apply to a depository check if the
15 receiving depository institution reasonably believes that the
16 check is uncollectible from the originating depository institution.
17 For purposes of this subdivision, "reasonable cause to believe"
18 requires the existence of facts that would cause a well-grounded
19 belief in the mind of a reasonable person. These reasons shall
20 include, but not be limited to, a belief that (1) the drawer or
21 drawee of the depository check has been, or will imminently be,
22 adjudicated a bankrupt or placed in receivership or (2) the
23 depository check may be involved in a fraud or in a scheme
24 commonly known as "kiting." In these situations, the depository
25 institution electing to proceed under this subdivision shall so
26 notify the drawer and drawee no later than the close of the next
27 business day following deposit of the depository check.

28 (c) For purposes of this section, the following terms have the
29 following meanings:

30 (1) "Account" means any demand deposit account and any
31 other similar transaction account at a depository institution.

32 (2) "Business day" means any day other than a Saturday,
33 Sunday, or legal holiday.

34 (3) "Cashier's check" means any check that is subject to the
35 following:

36 (A) The check is drawn on a depository institution.

37 (B) The check is signed by an officer or employee of the
38 depository institution.

39 (C) The check is a direct obligation of the depository
40 institution.

1 (4) “Certified check” means any check with respect to which a
2 depository institution certifies the following:

3 (A) That the signature on the check is genuine.

4 (B) The depository institution has set aside funds that are
5 equal to the amount of the check and will be used only to pay
6 that check.

7 (5) “Depository check” means any cashier’s check, certified
8 check, teller’s check, and any other functionally equivalent
9 instrument, as determined by the Board of Governors of the
10 Federal Reserve System or the commissioner.

11 (6) “Depository institution” has the meaning given in clauses
12 (i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal
13 Reserve Act.

14 (7) “Teller’s check” means any check issued by a depository
15 institution and drawn on another depository institution.

16 (d) Except for the specific circumstances and checks described
17 in this section, this section is not intended to restrict or preempt
18 the regulatory authority of the commissioner.

19 (e) In the event of a suspension or modification of any similar
20 provisions in the federal Expedited Funds Availability Act, the
21 effect of this section shall be similarly suspended or modified.

22 SEC. 2. It is the intent of the Legislature that the provisions of
23 Section 1 supersede the funds availability schedules set forth in
24 the federal Expedited Funds Availability Act, consistent with the
25 provisions in that act.